



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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**FOR THE CALICO SOLAR PROJECT
AMENDMENT**

Docket No. 08-AFC-13C

COMMITTEE ORDER AFFIRMING ORAL DIRECTIVES GIVEN DURING THE AUGUST 24, 2011 MANDATORY STATUS CONFERENCE

Background

On August 24, 2011, the Siting Committee (also referred to herein as "Committee") conducted a Mandatory Status Conference (Conference) in this matter, during which it affirmed the Energy Commission's status as California Environmental Quality Act (CEQA) lead agency over the entire project proposed in Calico Solar, LLC's¹ Petition to Amend (Petition). The Committee stated that the Commission will fulfill its role as CEQA lead agency under the Commission's certified regulatory program. The Siting Committee also summarized its expectations for the parties' environmental analyses. The discussion below clarifies and supplements those expectations.

Energy Commission Staff's Written Environmental Assessment

1. Staff shall prepare an initial written assessment typical of an Application for Certification proceeding, in the form of a single Preliminary Staff Assessment (PSA). Staff shall prepare a Final Staff Assessment (FSA) that includes responses to comments received on the PSA.
2. The PSA and FSA must evaluate the project's solar thermal powerplant component and its appurtenant and related facilities (e.g., temporary lay down area; main access road; main services complex; solar field comprised of SunCatchers; hydrogen generation, storage, and distribution system for the SunCatchers; substation; transmission line; water well and water line; and access routes) and also the PV component (e.g., solar field comprised of single-axis tracking PV modules).
3. The PSA and FSA must include a thorough cumulative impacts analysis that reflects the impacts of the entire project in combination with environmental changes anticipated from other past, present, and reasonably foreseeable future projects.

¹ The Committee is informed that Calico Solar, LLC recently changed its name to K Road Calico Solar LLC.

4. Each section of the PSA and FSA shall be organized with headings that distinguish the solar thermal powerplant component and its appurtenant and related facilities from the PV component.
5. Within each technical section of the PSA and FSA, the solar thermal powerplant component and its appurtenant and related facilities shall be discussed first and then followed by a discussion of the PV component. The discussion of the solar thermal powerplant component and its appurtenant and related facilities shall identify and evaluate impacts and, for each identified impact, include proposed conditions of certification that will avoid the impact or reduce it to less than significant levels. The discussion of the PV component shall identify and evaluate impacts and, for each identified impact make recommendations for consideration by the appropriate permitting agencies to avoid the impact or reduce it to less than significant levels.

Project Alternatives Evaluation

Under CEQA, an environmental impact report (or its functional equivalent) must describe a range of reasonable alternatives to a project or its location that could feasibly avoid or lessen significant environmental impacts while substantially attaining the basic project objectives. (See, e.g., Cal. Code Regs., tit. 14, §§ 15126.6, 15252.) The December 1, 2010, Commission Decision approving the Calico Solar Project identified the following project objectives:

- To construct and operate an up to 663.5 MW renewable power generating facility in California capable of selling competitively priced renewable energy consistent with the needs of California utilities;
- To locate the facility in areas of high insolation with ground slope of less than five percent;
- To provide clean, renewable electricity to support California's Renewable Portfolio Standard Program (RPS);
- To assist in reducing its greenhouse gas emissions as required by the California Global Warming Solutions Act;
- To contribute to the achievement of the 33 percent RPS target set by California's governor and legislature; and
- To complete the review process in a timeframe that would allow the Applicant to start construction or meet the economic performance guidelines, by December 31, 2010, to potentially qualify for the 2009 ARRA cash grant in lieu of tax credits for certain renewable energy projects. (Decision, Project Alternatives, pp. 1-2.)

The Petition reaffirms these objectives and clarifies that the ARRA deadline was extended to December 31, 2011. (Petition, p. 4.1-1.)

The Petition further states that “[t]he Commission Decision included a comparison of the Approved Project to the No Project Alternative and a reasonable range of other alternatives that were designed to attain most of the basic Project objectives while avoiding or substantially lessening the Approved Project’s significant effects. Approval of the Modified Project would not undermine the reasoning of, or substantially alter, the analysis of alternatives provided in the Commission Decision.” (Petition, p. 4.1-1.) Thus, according to Calico, no further alternatives analysis is required.

The Siting Committee recognizes however that while the project objectives remain unchanged, the Petition proposes modifications that have potential to create new impacts or exacerbate previously identified impacts, particularly in the areas of **Biological Resources, Traffic and Transportation, and Soil and Water Resources**. Thus, as stated in its July 1, 2011, ruling, the Siting Committee seeks a more robust analysis than presented in the Petition, which evaluates the alternatives that would avoid new impacts or reduce them to less than significant levels or would avoid or lessen exacerbation of previously identified environmental impacts.² Based on oral and written information submitted in the proceedings to date, the Siting Committee finds that Staff’s alternatives discussion must explore the feasibility of:

- A project located exclusively south of the BNSF tracks that uses only PV technology, only SunCatcher technology, and a combination of PV/SunCatcher technology.
- A water well located south of the BNSF tracks.
- A project configuration that avoids washes and minimizes drainage impacts – with particular focus on impacts to the BNSF tracks and adjacent properties.
- Specifically regarding compensatory mitigation for desert tortoise, mojave fringe-toed lizard and other biological resources impacts, a project configuration that would allow for 1:1 and 3:1 mitigation ratios and avoid the need for 5:1 mitigation ratios.

The Committee recognizes that the evidence may prove any or all of these alternatives to be infeasible or unable to attain the project’s objectives while reducing significant impacts.

Environmental Baseline

As stated in the Committee’s July 1, 2011, ruling, “the Petition is not for a new project, nor do we treat the Petition as such. Accordingly, the Commission’s environmental evaluation of the Petition must be limited to the incremental effects of the changes to the approved Calico Solar Project unless any of the factors set forth in Section 21166 (and CEQA Guideline 15162) apply. At this early stage in the proceedings the

² The Committee’s July 1, 2011, ruling states: “Finally, as the Committee receives additional information regarding the full scope and nature of the Petition’s environmental impacts and baseline conditions, the Committee will require an updated alternatives analysis. (§ 21080.5, subd (d)(3) [requiring an EIR to include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse environmental impacts], Cal. Code Regs., tit. 20, § 1203, subd. (a).).”

Committee has insufficient information to identify each of the technical areas to which the factors do or may well apply.”

While the text of the July 1 ruling speaks for itself and accurately reflects the Committee’s current view of the appropriate environmental baseline for Staff’s environmental assessment, the Committee offers the following clarifying comments to address questions raised during the Conference. In particular, Calico asked the Committee to clarify the scope of analysis triggered by the new information as to the technical areas identified in the July 1, 2011, ruling: **Biological Resources, Soil and Water Resources, Traffic and Transportation, Visual Resources, and Public Health**. Calico’s wish to better understand the scope of additional analysis is reasonable. However, the parties and their respective experts – not the Committee – must bear the burden of answering Calico’s question. The scope of the analysis will depend on the new information and changed circumstances that are identified.

At this initial stage in the proceedings where no evidence has been submitted to or received by the Committee, the parties have superior knowledge about the details of the new information and changed circumstances. Indeed, the parties alerted the Committee that there is new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous environmental document was certified as complete.³ In response to the parties’ submittals, the Committee made the following determinations in its July 1, 2011, ruling:

At this early stage in the proceedings, we have insufficient information to identify each of the technical areas to which the factors do or may well apply. We continue to examine this issue as the proceedings progress. However, based on information from sources including the Petition, and oral argument, comments, and filings in the Petition proceedings, there is sufficient information to compel a determination that at least one, and perhaps more, of the factors apply to the technical areas of **Biological Resources, Soil and Water Resources, Traffic and Transportation, Visual Resources, and Public Health**. For each of these technical

³ The following documents support the Siting Committee’s initial and restated determination that there is new information warranting deviation from the general rule of evaluating incremental effects of the changes to the approved Calico Solar Project in a subsequent environmental assessment: (1) Energy Commission Final Decision for the Calico Solar Project, dated December 1, 2010; (2) Energy Commission Staff Issues Identification Report dated April 14, 2011; (3) Reporter’s Transcript of April 20, 2011, Informational Hearing and Public Site Visit; (4) Energy Commission Staff’s Response to Committee Briefing Order, dated May 23, 2011; (5) Calico Solar, LLC’s Brief on the Baseline of Environmental Conditions and the Environmental Analysis Required by the Petition to Amend, dated May 23, 2011; (6) Calico Solar, LLC’s Reply Brief Re Jurisdiction of Energy Resources Conservation and Development Commission and the Baseline of Environmental Analysis Required by the Petition to Amend, dated June 3, 2011; (7) BNSF Railway Company’s Brief Regarding Jurisdiction and Baseline, dated May 23, 2011; (8) BNSF Railway Company’s Reply Brief Regarding Jurisdiction and Baseline, dated June 3, 2011; (9) Energy Commission Staff’s Reply Brief, dated June 3, 2011; and (10) Letter from Tanya A. Gulesserian to Commissioner Douglas and Chairman Weisenmiller, dated April 18, 2011. See also, Reporter’s Transcript of August 24, 2011, Mandatory Status Conference [including additional discussion of baseline conditions by Sierra Club pertaining to potential impacts to the desert tortoise].

areas, there is new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous environmental document was certified as complete. This information shows that the modified project is likely to or will have one or more significant effects not discussed in that document. In particular, there is information that: (1) the Petition proposes a new access road outside of the project footprint, (2) there are differences between the original placement of SunCatchers and the proposed new placement of PV panels and SunCatchers, (3) there are differences between the profiles of the PV modules and the SunCatchers, and (4) there is a new sequence and timing of site development.

Regarding **Biological Resources**, the impacts to on-site federally endangered species (including the desert tortoise and Bighorn Sheep) as well as other special status plant and wildlife species from the changes in grading and drainage and the introduction of shade from the PV array were not and could not have been previously evaluated. Furthermore, recent developments at the Energy Commission certified Ivanpah Solar Electric Generating System Project resulted in the identification of substantially more endangered desert tortoise on-site than predicted. Because the Final Decision for the Calico Solar Project indicates that the Calico site provides similar, if not better, habitat for the desert tortoise than the Ivanpah site, it is essential that Calico assess anew (1) whether and to what extent the modified project's impacts on desert tortoise (which may involve new significant environmental impacts or a substantial increase in the severity of previously identified significant impacts) are adequately addressed by the mitigation for the approved project, and (2) the feasibility of additional mitigation.

Grading and drainage were critical issues for the approved Calico Solar Project and they continue to be critical in this amendment process. Although we are awaiting Calico's completion of the proposed drainage and grading plans to satisfy both conditions of certification for the approved project and data requests relating to the Petition, the new information relating to proposed grading for the PV modules, placement of the modules (both method and location), and the proposed method of accessing the PV modules indicates that these changes will involve new significant environmental effects or a substantial increase in the severity of previously identified significant impacts to **Soil and Water Resources**.

Similarly, the new access road that is proposed outside of the project footprint, the differences between the original placement of SunCatchers, the proposed new placement of PV panels and SunCatchers, and differences between the profiles of the PV modules and the SunCatchers, compel a new environmental assessment of **Traffic and Transportation** and **Visual Resources** impacts, including but not limited to glint and glare.

None of the potential impacts associated with these changes was or could have been assessed in the initial environmental document but each of these changes is likely to result in significant impacts that were not previously assessed.

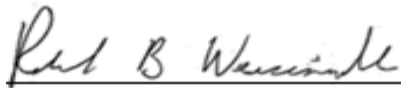
If the parties believe there are additional issues to be addressed or are uncertain about the appropriate scope of analysis of the issues identified in its July 1, 2011, ruling, the Committee recommends that Energy Commission Staff convene a workshop or series of workshops on the environmental baseline issues to obtain consensus, to the extent possible, on the appropriate scope of analysis. Workshops should be guided by this order, the July 1, 2011, ruling, and party submittals referenced herein.

IT IS SO ORDERED.

Dated September 7, 2011, in Sacramento, California.

A handwritten signature in black ink, appearing to read 'K. Douglas', written over a horizontal line.

KAREN DOUGLAS
Commissioner and Presiding Member
Siting Committee

A handwritten signature in black ink, appearing to read 'Robert B. Weisenmiller', written over a horizontal line.

ROBERT B. WEISENMILLER
Chair and Associate Member
Siting Committee